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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF DISAPPEARANCES AND SUMMARY EXECUTIONS

Letter dated 10 April 2002 from the Permanent Representative of Turkey to the United Nations Office at Geneva addressed to the United Nations High Commissioner for Human Rights

I have the honour to transmit herewith the observations of my Government on the report of Ms. Asma Jahangir, Special Rapporteur of the Commission on Human Rights on extrajudicial, summary or arbitrary executions, concerning her visit to Turkey from 19 February to 1 March 2001 (E/CN.4/2002/74/Add.1).

I would appreciate it if you would have the enclosed observations* circulated as an official document of the fifty-eighth session of the Commission on Human Rights.

(Signed): Murat SUNGAR
Ambassador
Permanent Representative

* Reproduced as received in the language of submission, in English only.

Annex

OBSERVATIONS OF THE GOVERNMENT OF TURKEY ON THE REPORT OF MS. ASMA JAHANGIR, SPECIAL RAPPORTEUR OF THE UN COMMISSION ON HUMAN RIGHTS ON EXTRAJUDICIAL, SUMMARY OR ARBITRARY EXECUTIONS, CONCERNING HER VISIT TO TURKEY FROM 19 FEBRUARY TO 1 MARCH 2001

1. Upon the invitation of the Government of Turkey Ms. Asma Jahangir, Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, visited Turkey between 19 February and 1 March 2001.

2. The visit of the Special Rapporteur falls within the scope of a series of visits to Turkey by special rapporteurs mandated to carry out thematic procedures of the Commission on Human Rights. It is noted with satisfaction that the Special Rapporteur recognised the cooperation extended to her by the Turkish Government.

3. These visits clearly demonstrate the willingness of the Government of Turkey to fully cooperate with the mechanisms of the Commission on Human Rights. Like other special rapporteurs who had visited Turkey, Ms. Jahangir was received at ministerial level, her requests for meetings with official representatives were met and she enjoyed full cooperation of the Turkish authorities during her visit.

4. The report of the Special Rapporteur concerning her visit which was issued as a Commission on Human Rights document (E/CN.4/2002/74/Add.1) has been carefully examined by the Turkish authorities. The present document aims to outline the views and observations of the Turkish authorities on the said report.

5. The report of the Special Rapporteur Ms. Asma Jahangir, concentrates on the alleged "extrajudicial, summary or arbitrary executions", although it also contains some rather general, and superficial observations on the Turkish governmental system.

6. Extrajudicial, summary or arbitrary executions are in no way condoned or excused under the Turkish legal system. Such a situation is inconceivable in any civilized country. Article 17 of the Constitution of Turkey recognises and

guarantees the right to life, according to which "everyone shall enjoy the right to life and pursue improvement of himself/herself physically and morally. The physical integrity of the individual shall not be violated except under medical necessity or in cases prescribed by law; he/she shall not be subject to scientific or medical experiments without his/her consent." The last paragraph of Article 17 provides for the exceptions of the rule: "The execution of death sentences following a court verdict, the act of killing in self-defence, occurrences of death as a result of the use of arms permitted by law as a necessary measure during the execution of warrants of detention and arrest, the prevention of the escape of arrested or convicted persons, the quelling of a riot or insurrection, or carrying out the orders of authorised bodies during martial law or a state of emergency, are outside the scope of the provisions of paragraph 1."

7. These exceptions are essentially parallel to and in conformity with those provided by the European Convention of Human Rights. Under Article 2 of the Convention, "1. Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. 2. Deprivation of life shall not be regarded as inflicted in contravention of this article when it results from the use of force which is no more than absolutely necessary a) in defense of any person from unlawful violence; b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; c) in action lawfully taken for the purpose of quelling a riot or insurrection."

8. It is clear from the above that deaths occurred in circumstances referred to by the last paragraph of Article 17 of the Constitution cannot be regarded as extrajudicial or arbitrary executions. Problems may arise in practice, however, because of the difficulty of distinguishing the cases lawfully covered by the last paragraph of Article 17 from those that cannot be justified by the said paragraph. The latter cases are vigorously prosecuted by public prosecutors. Nevertheless, the proceedings may sometimes result in acquittals due to lack of sufficient evidence. Therefore, it seems unjust to argue that Turkish law "extends a measure of impunity for the excessive use of force" and that "this systematic impunity has led to an atmosphere of fear among the population and undermined the citizen's trust in the law enforcement agencies and the justice system." Such an impunity is inconceivable under a legal system based on the rule of law. The Special Rapporteur admits, however, that what she refers to as extrajudicial or arbitrary executions have "virtually come to an end" or "dramatically reduced."

9. Similarly, the Special Rapporteur admits that the adoption of the Law on the Accountability of Civil Servants and other Public Employees (2 December 1999) represents an "improvement" over the previous situation. She agrees that "the new law does place a time limit for taking the decision on whether to prosecute a civil servant and gives greater authority to prosecutors in that regard." Furthermore, where permission to prosecute the accused official is denied by the senior officer to whom the accused civil servant is attached, the public prosecutor may appeal to the Council of State or the relevant regional administrative court, whose decision shall be final. Despite a certain degree of confusion observed by the Special Rapporteur, there should be no doubt that "intentional killings" would not fall under this law and would be prosecuted according to the general provisions of criminal law.

10. Although the bulk of the Special Rapporteur's report is focused on alleged extrajudicial executions, she also takes the occasion to make some more general observations on the Turkish legal and political system, many of which are open to debate and criticism. For example, she argues that "elected local bodies are subservient to governors of provinces who are appointed by the central Government." In fact, mayors and municipal councils enjoy broad powers and control substantial resources. Similarly, she observes that "the Constitutional Court largely serves the institution of the President and, to a lesser extent, the Parliament. The doors of this apex court are closed to individuals." In fact, the Turkish Constitutional Court is one of the oldest, strongest and most independent in Europe. Individuals may activate the review of constitutionality by way of "concrete review", i.e. through a plea of unconstitutionality of the applicable law in a pending trial before any other court. Turkish law does not give individuals direct access to the Constitutional Court in the form of "constitutional complaints". But this is a practice found only in a minority of European constitutional courts.

11. Given that the Special Rapporteur's visit to Turkey took place from 19 February to 1 March 2001, the report did not take into account the constitutional amendments adopted by the Turkish Grand National Assembly on 3 September 2001, some of which are quite pertinent to the issues referred to by the Special Rapporteur. The constitutional amendments comprise the revision of almost one-fifth of the Constitution. Prepared in line with the provisions of the European Convention on Human Rights, the constitutional amendments strengthen the exercise of freedom of thought and conscience, the prevention of torture and inhuman treatment, the strengthening of civilian authority, the freedom and the security of the individual, the freedom of association, the right

to a fair trial, inviolability of domicile, the freedom of communication and gender equality.

12. Article 19 which is quite pertinent to the issues referred to by the Special Rapporteur was amended to shorten the pre-trial detention periods to forty-eight hours in ordinary crimes and four days in collective crimes (crimes committed by more than one person). The amendment brings Turkish legislation into conformity with the Council of Europe standards and significantly reduces the possibility of torture or ill-treatment during police detention. The amendment also makes it compulsory in all cases that the detainee's next of kin be immediately notified of detention or arrest.

13. Another provision which should be mentioned in this context is related to death penalty. With the recent amendment, it now applies only to terrorist crimes and in times of war or imminent threat of war. Bearing in mind Turkey's long-lasting fight against terrorism and the still-fresh scars of it, it would be fair to present this amendment as a rather courageous step towards the goal of abolishing the death penalty.

14. The Special Rapporteur observes that Article 26 of the Constitution guarantees freedom of expression with the restriction that "no language prohibited by law shall be used in the expression and dissemination of thought." This phrase has been deleted from Articles 26 and 28 by the constitutional amendments of 2001.

15. Similarly, the 2001 amendments brought about certain significant changes in the constitutional position of the National Security Council by increasing the number of its civilian members and underlining the "advisory" or "consultative" character of its decisions.

16. It should also be noted that basic international instruments to which Turkey is signatory have been submitted to the Parliament for approval. These include the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the International Convention on the Elimination of All Forms of Racial Discrimination. The latter was approved by the Parliament on 3 April 2002. With the ratification of those three instruments, Turkey will become party to all the six fundamental United Nations instruments in the field of human rights.

17. Finally, Turkey has persistently maintained its resolve to implement an extensive programme of human rights even during its long-standing legitimate fight against terrorism. The Turkish Governments have remained fully committed to undertaking legal amendments and translating them into action with a view to removing the existing shortcomings in line with the aspirations of its people as well as in compliance with its international obligations.